



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 24, 1997

Mr. Firmin A. Hickey, Jr.  
Law Office of Firmin A. Hickey, Jr.  
11511 Katy Freeway, Suite 590  
Houston, Texas 77079-1903

Chief Robert Gracia  
Office of the Chief of Police  
City of Rosenberg  
2120 Fourth Street  
Rosenberg, Texas 77471-5124

OR97-2375

Dear Mr. Hickey and Chief Gracia:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 109527.

The City of Rosenberg Police Department (the "department") received a request for a variety of information related to the police department's termination of the requestor from the police force.<sup>1</sup> In response to the request, you submitted to this office for review the information you assert is responsive. You assert that the submitted information should be withheld from disclosure pursuant to section 552.108 of the Government Code, since you contend the records are "part of an internal affairs investigation." We have considered the exception you claim and reviewed the submitted information.

The Seventy-Fifth Legislature amended section 552.108 of the Government Code to read as follows:

---

<sup>1</sup>We note that the requested records overlap with certain information which was the subject of a previous ruling in Open Records Letter No. 97-2297 (1997).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

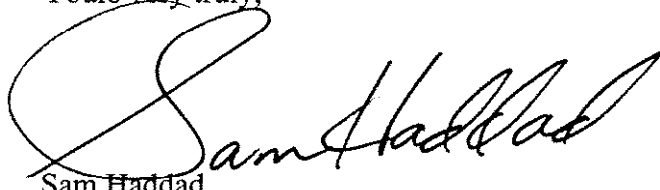
(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

See Gov't Code § 552.108. In your original letter to this office requesting a ruling, you asserted that the requested records "represent information given by individuals as a part of an ongoing internal affairs investigation which, if released, might jeopardize the informants or otherwise compromise the investigation."<sup>2</sup>

We note that because the Legislature has amended section 552.108, effective September 1, 1997, this office requested additional briefing on your claimed exception to disclosure with regards to related information requested in ID# 109511. See Act of June 1, 1997, H.B. 951 § 1, 75<sup>th</sup> Leg., R.S. (to be codified at Gov't Code §552.108). In response to our request for additional information, you stated that the requested records relate to an ongoing investigation which could result in the filing of criminal charges. Based on the arguments presented in your brief and because the documents at issue relate to a pending criminal investigation, we conclude that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Thus, the requested information is excepted from disclosure under section 552.108(a)(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", written over a large, loopy initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

---

<sup>2</sup>When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 350 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from investigation of police officer for alleged misconduct, section 552.108 is inapplicable).

Ref.: ID# 109527

Enclosures: Submitted documents

cc: Mr. Todd D. Rowley  
1402 Caslyn Drive  
Rosenberg, Texas 77471-6109  
(w/o enclosures)